

United States District Court
Western District of Texas
San Antonio Division

Laura Vargas
Plaintiff,

v.

United States of America,¹
Defendant.

No. 5:20-CV-01130

Notice of Removal and Substitution and Application for Order Thereon

Defendant United States of America files this Notice of Removal and Substitution and Application for Order Thereon, pursuant to the provisions of 28 U.S.C. § 2679(d)(2) and 28 U.S.C. § 1442, removing the above-entitled action now pending as Cause No. 2020-CI-15393 in the 288th Judicial District Court, Bexar County, Texas.

On August 14, 2020, an action was filed as Cause No. 2019-CI-15393 in the 288th Judicial District Court, Bexar County, Texas, entitled LAURA VARGAS, Plaintiff, vs. RYAN SHINGLER, Defendant. A copy of Plaintiff's Original Petition and all pleadings are attached hereto as **Exhibit 1**. The United States has not been properly served with the Citation or Petition pursuant to Federal Rule of Civil Procedure 4(i). Trial has not been set or held.

Attached hereto as **Exhibit 2** is a certification that Defendant Ryan Shingler was acting within the scope of his deemed federal employment at all relevant times as alleged in the Petition. Because Plaintiff alleges she was injured by a federal employee acting within the scope of their employment on behalf of the United States Postal Service, Plaintiff must proceed with this action, if at all, under the Federal Tort Claims Act ("FTCA"). The United States is the only proper defendant in an FTCA action. *Galvin v. Occupational Safety & Health Admin.*, 860 F.2d 181, 183 (5th Cir. 1988). Although substitution is required under the FTCA, the United States applies for an Order from the Court dismissing Ryan Shingler as Defendant and substituting the United States in his place to avoid any future confusion.

¹ Substituted for Defendant Ryan Shingler by operation of law.

Pursuant to the provisions of 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal will be filed with the 288th Judicial District Court in Bexar County, Texas, a true and correct copy of which is attached hereto as **Exhibit 3**.

Pursuant to Local Court Rule CV-3(a), a JS 44, Civil Cover Sheet is attached hereto as **Exhibit 4**.

As this federal case is being initiated via removal, a Supplement to JS 44 is attached hereto as **Exhibit 5**.

United States of America provides this Notice that the action now pending in the 288th Judicial District Court, Bexar County, Texas against Defendant Ryan Shingler is timely removed to this Court.

Respectfully submitted,

John F. Bash
United States Attorney

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Certificate of Service

I certify that on September 22, 2020, I electronically filed this document with the Clerk of Court using the CM/ECF system.

I also certify that I have mailed this document by United States Postal Service to the following non-CM/ECF participant(s):

Steven G. Marquez
The Law Offices of Thomas J. Henry
5711 University Heights, Suite 101
San Antonio, Texas 78249

/s/ Matthew Mueller

Matthew Mueller
Assistant United States Attorney